

1 2000 -- or 1996, is that correct?

2 A According to this document. March 18th I  
3 met with --

4 Q And --

5 A -- Mr. Kookogey.

6 Q And it occurred in Titusville, did it not?

7 A Traveled to Titusville and Segal, wherever  
8 that is.

9 Q It's a place in Pennsylvania.

10 A I assumed.

11 Q Well, first of all, did you meet in  
12 Mr. Kookogey's office?

13 A My recollection is we met in his office.

14 Q And was he willing and did he provide  
15 documents to you that related to these matters?

16 A Yes.

17 Q And the reason why I say that is in Exhibit  
18 3, if you take a moment, take a look, just use this as  
19 an example, there is a March 31, 1969 letter that's  
20 identified as Defendant's Exhibit A3. Would that be  
21 the type of documents that were provided to you by  
22 Mr. Kookogey as a consequence of that meeting? Just  
23 using that as an illustration.

24 A I honestly don't know what I got from him.  
25 Certainly it --

1 Q Tell us generically what you got from him.

2 A I have no clue. I met with him, went over  
3 things with him, saw his file, and my recollection is  
4 he made his file available to me at that time.

5 Whether I took it with me at that time and I copied it  
6 or whether he copied it and sent it to me, I don't  
7 know. But I did meet with him, I looked at documents,  
8 I got copies of documents from Mr. Kookogey.

9 Q Okay. How long did the meeting last with  
10 him, just your best estimate?

11 A I don't have any idea. Could have been an  
12 hour, could have been three hours. I don't honestly  
13 remember.

14 Q Anybody else present besides you and  
15 Mr. Kookogey in the meeting?

16 A I don't remember.

17 Q Now, I just noticed on that document there  
18 is an exhibit sticker?

19 A Says Defendant's Exhibit A3.

20 Q With regards to the exhibit sticker, can  
21 you tell us whose office put the exhibit sticker on?

22 A Well, if this document was one of the  
23 documents introduced in the trial that I was the  
24 counsel of, it would have been put on by my office.

25 Q Okay. Under your supervision, is that

1 correct?

2 A Yes. I don't think I stuck it on there and  
3 wrote that, but yes.

4 Q Was it your customary practice to use that  
5 type of symbol as far as defense exhibits that you may  
6 be offering at the time of trial?

7 A Plaintiffs generally go with numbers.  
8 Defendants go with letters.

9 Q Do you have a recollection, it's customary  
10 practice to exchange exhibits between the plaintiff's  
11 counsel and defense counsel prior to trial?

12 A Yes.

13 Q And do you have a recollection as to  
14 whether or not that occurred in this particular case?

15 A Yes, it did.

16 Q Okay. So from my understanding if these  
17 were marked, had exhibit stickers on them, they would  
18 have been provided to counsel representing  
19 Mr. Carlisle for his review certainly?

20 A If this set of documents came from that  
21 trial, they would have been marked by me and copies  
22 would have been provided to Mr. Hare.

23 Q Okay. And you say this, so we are talking  
24 about --

25 A What's marked as Deposition Exhibit No. 3.

1 MR. HABER: I'm going to object to the  
2 form. That document, if I recall, it doesn't  
3 identify where the timber was removed and so  
4 forth. Are you asking him to reach a conclusion  
5 whether they owned the timber that they removed  
6 in 1993?

7 MR. CONNER: I'm just asking --

8 MR. HABER: I'm objecting to that question.  
9 I don't think he is here for that purpose to give  
10 his opinion as to who owned the timber or not.

11 MR. CONNER: Well, I'm --

12 A It's my belief this timber was owned by  
13 Matson. They were entitled to cut it and sell it.

14 Q Okay. Was it your understanding then there  
15 was, there were deed documents that conveyed that  
16 timber to Matson that gave it its right to take that  
17 timber off that property?

18 A There were deed documents to Matson from  
19 Fisher & Young that gave them the right to take that  
20 timber.

21 Q And was it your understanding that Kinkead  
22 had provided Fisher & Young with deed documents or  
23 conveyance documents that gave Fisher & Young those  
24 rights?

25 A I can't tell you today what my

1 understanding of how Fisher & Young got the timber  
2 that they sold to Matson.

3 Q Is it your understanding that they had a  
4 document, that is Fisher & Young had a document from  
5 the owner of the timber, which has been identified on  
6 the record as Mrs. Kinhead that gave them rights  
7 beyond April 1, 1978 to take that timber?

8 A That I can't really answer. I can only say  
9 that it was my understanding at that time that Matson  
10 had the rights through Fisher & Young to take that.

11 Q Okay. So maybe to end the subject, it was  
12 your understanding then at least during that time  
13 period that you were involved that Fisher & Young had  
14 rights beyond April 1, 1978 to take timber from that  
15 property, as evidenced by some document?

16 A Yes.

17 Q And you cannot identify that document  
18 today?

19 A No.

20 Q Was it also your understanding that that  
21 document, if it existed, would have been recorded in a  
22 courthouse such as Warren County?

23 A I don't know what that is. I have no clue.  
24 I would assume like everybody else does that deeds are  
25 recorded but I don't have any recollection of that.

1 Q Let me then go back a second.

2 (THEREUPON, Fossee Deposition Exhibit Nos.  
3 10 and 11 were marked for identification.)

4 Q I'm going to show you what has been marked  
5 as Exhibit 10 for these proceedings. It's identified  
6 as Plaintiff's First Request for Production of  
7 Documents. It's dated March 13, 1995 and it purports  
8 to be a response to it that's dated June 15, 1995.  
9 Take a moment to take a look at that document. I'd  
10 like to ask you some questions about that.

11 A Okay.

12 Q Can you identify the document for the  
13 record, please?

14 A Document appears to be a request for  
15 production of documents and a response thereto that I  
16 signed.

17 Q Am I correct on the dates, the document,  
18 original document was served on apparently as part of  
19 the Complaint in mid March of 1995?

20 A Certificate of service indicates that it  
21 was served the 13th of March by first class mail and  
22 the date, my date of signature indicates that on the  
23 16th day of June a true and correct copy of the  
24 response was provided.

25 Q Okay. Now, at the time that you provided

1 your response with regards to the documents that have  
2 been assembled together in Exhibit 3, would I be  
3 correct that you did not have this particular  
4 compilation of documents at the time you prepared that  
5 response, is that correct?

6 A I do not know what I had and what I didn't  
7 have.

8 Q Okay.

9 A I would, under normal circumstances, you  
10 rarely have everything that early in the case.

11 Q Sure.

12 A But I don't know what I had and what I  
13 didn't.

14 Q Let me see if we can go fast forward. We  
15 know that you filed your response about nine months  
16 prior to your meeting with Mr. Kookogey, is that  
17 correct? Because your meeting with Mr. Kookogey  
18 wasn't until March of 1996, I believe, according to  
19 the letter we just identified here today.

20 A Okay. Your dates appear to be accurate.

21 Q Okay. So looks like your response was  
22 prepared and filed prior to your meeting with  
23 Mr. Kookogey and getting whatever documents  
24 Mr. Kookogey had, is that correct?

25 A Yes.

1 related to Carlisle's interest in the property.

2 Q Okay. So --

3 A That's what these relate to.

4 Q So from your understanding in responding to  
5 requests for 4, was it your understanding that you  
6 were not being requested to identify or provide the  
7 documents evidencing the transfer of ownership of the  
8 timber to Fisher & Young?

9 A I viewed it as how we got the documents,  
10 how we got the timber rights. We got the timber  
11 rights from Fisher & Young.

12 Q Matson got the rights, the timber rights  
13 from Fisher & Young?

14 A Correct.

15 Q Okay. Let me just keep on going for a  
16 second. Did you understand that this request was  
17 broad enough to require you to produce the documents  
18 that would have evidenced the transfer of timber  
19 rights from the owner of the timber to Fisher & Young?

20 A No.

21 Q So if that request had specifically been  
22 made, then you would have required further research on  
23 your part to provide those documents, is that correct?

24 A No. What it would have required me is if I  
25 had the documents, to produce them.



1 Q Okay.

2 A I don't have to, under the rules, go out  
3 and look for documents. I have to give them what I  
4 have.

5 Q Understood. In other words, you would have  
6 had to check with your client, Matson, to see whether  
7 or not --

8 A If they had anything, whatever they had, I  
9 would have to provide under the rules.

10 Q Okay. So as I understand it then from your  
11 perspective, a request was not broad enough as  
12 indicated in that request to require you to go back to  
13 Matson, say to Matson, I would like to see the  
14 documents that you have that convey the timber rights  
15 to Fisher & Young, is that correct?

16 A That's right. I was looking for the  
17 documents. That's why I put in the merger language  
18 that it was, that's how we got it. We got, we got  
19 whatever rights that Fisher & Young had in that timber  
20 from Fisher & Young in the merger documents.

21 Q Now, at any time after these proceedings,  
22 all the way up until, and I'm talking about at any  
23 time after this was filed in May of 1995 up until the  
24 trial in 1997, had you ever been requested in any  
25 other, either formal discovery request or informal

1 Q Okay. And we know that that's the 1985 or  
2 1986 transaction, is that correct?

3 A That's correct.

4 Q And can you tell us whether or not when you  
5 prepared this Answer to this Interrogatory whether or  
6 not you in fact had any documents that supported the  
7 assertion that Fisher & Young Hardwoods, Inc. owned  
8 the timber rights on the Clough Farm beyond the date  
9 of April 1, 1978?

10 A I honestly at this time do not know. I  
11 don't know whether I had the Article of Agreement that  
12 sold them the property or not.

13 Q Okay. Let me then just keep on going here  
14 with regards to some of these other documents we have.  
15 We will have to take a break here. Let me mark that  
16 as the next exhibit if you would, please.

17 (THEREUPON, Fossee Deposition Exhibit No.  
18 12 was marked for identification.)

19 Q The date of the document purports to be  
20 October 30, 1987 date, correct?

21 A 1987, yes.

22 Q And is the letter from Mr. Kookogey, I  
23 believe, to Robert Matson who was president of Matson  
24 Lumber, is that correct?

25 A That is correct.

1 before I saw it right here.

2 Q The reason I ask and maybe I can save some  
3 time, there is a reference in the bottom part of the  
4 paragraph, the bottom last paragraph that goes over  
5 into the next page, if you will, just maybe could read  
6 that out loud. Then I can ask you a question about  
7 that. Starts with the word timber agreement.

8 A Uh-huh. Okay, I read it.

9 Q If you would read that into the record.

10 A "The timber agreement was made separate  
11 from the other real estate in --" excuse me. "The  
12 timber agreement was made separate from the other real  
13 estate and in agreement form for two reasons, viz, to  
14 provide for an installment sale for the seller and to  
15 avoid payment of the 1 percent transfer stamps on the  
16 portion of the whole consideration allocated to  
17 timber."

18 Q Okay. And this letter purports to be  
19 prepared by John S. Kookogey and it's a letter to  
20 Mr. Warren who you understood was representing  
21 Mr. Carlisle in that transaction, that is in the  
22 Fisher & Young Carlisle transaction, Mr. Warren was  
23 Mr. Carlisle's counsel and Mr. Kookogey was Fisher &  
24 Young's counsel?

25 A I don't have any recollection of who he

1 represented.

2 Q Who, Mr. Warren?

3 A Yeah. I honestly didn't.

4 Q Let's back up.

5 A I'm sure I knew back then, but right now,  
6 until you said that, I didn't have any recollection.

7 Q But Mr. Kookogey represented Fisher & Young  
8 in the transaction, is that right?

9 A Yes, to my knowledge that's correct.

10 Q Now, my question is having read that the  
11 timber agreement was made separate from the other real  
12 estate agreement form for two reasons, and they gave  
13 you the two reasons, one because of the installment  
14 sale for the seller -- Now, in the context of the word  
15 seller, did you understand that that would be the  
16 Kinkead estate?

17 A That would be --

18 MR. HABER: Kinkead estate?

19 Q Or well Marion Kinkead, excuse me.

20 A Yeah.

21 Q Okay. And with regards to the timber  
22 agreement that's made reference to in that paragraph,  
23 is it your testimony today that you do or do not have  
24 any recollection of seeing the timber agreement that's  
25 being referenced to in that letter?

1           A        I'm sure I saw the agreements that we just  
2 looked at here, which I'm assuming that's what this  
3 is.

4           Q        Okay.

5           A        I'm sure I saw it.

6           Q        Okay. So in the context of that letter  
7 then you did see that timber agreement, is that your  
8 understanding?

9           A        Yeah.

10          Q        Now, that would have been at some point  
11 between the time that you met with Mr. Kookogey and  
12 the time that you would have received the Kookogey  
13 documents if he mailed them to you, is that correct?

14          A        I don't have a clue. I could have gotten  
15 these from Matson.

16          Q        Okay. Either way, it's your understanding  
17 you did see that timber agreement, is that correct?

18          A        Yes.

19          Q        And with regards to the timber agreement,  
20 you said you saw, make reference to in that letter,  
21 would that timber agreement have been available to  
22 Mr. Hare?

23                   MR. HABER: I'm going to object to the form  
24 of the question.

25          A        I honestly don't know. At some point it

1 was.

2 Q Okay. In other words, if he had asked you  
3 for the timber agreement, you would have produced it  
4 for him?

5 A Well, he got all the documents contained in  
6 here.

7 Q All the documents contained in Exhibit 3,  
8 is that correct?

9 A Assuming that that's what I provided as the  
10 documents I was utilizing in my case.

11 Q Okay. Now, let's back up the train a  
12 second because I asked you, I had some documents here  
13 that I wanted to identify. I think that probably in  
14 the sequence of events it will probably be easier if  
15 we look at Deposition Exhibit 12 which we have already  
16 looked at. You have identified that document. We  
17 have Exhibits 13 and 14 to look at, I think a couple  
18 other ones to look at.

19 Take a look at exhibit, let's start with  
20 Exhibits 15 and 16. I apologize for maybe marking two  
21 exhibits unnecessarily, but Exhibit 15 purports to be  
22 a certificate of title that's signed by Mr. Kookogey.

23 I also have a transmittal letter and this  
24 purports to be a certificate of title from Fisher &  
25 Young Hardwoods to Matson. And then there is a cover

1 of the question. You asked for his legal opinion  
2 as to what is the effect of the verdict?

3 MR. CONNER: I'm not asking for legal  
4 opinion. I'm just asking for his understanding  
5 as to whether or not his understanding, the  
6 effect of the jury verdict indicated that  
7 Matson's rights were less than perpetual.

8 MR. HABER: Well, that would ask for a  
9 legal conclusion regarding what are the rights of  
10 the parties on the verdict. I'm going to object  
11 to the question. I don't think he is here to  
12 answer that question. But I'm not his counsel.

13 A The verdict slip speaks for itself. The  
14 verdict slip says is that all the timber that existed  
15 on the property in 1969 is, Matson has the right to  
16 harvest forever.

17 Q You are talking about timber that was in  
18 existence as of 1969?

19 A That's what the verdict slip says.

20 Q Now, the reason why I ask you that  
21 question, go to page 5 of your letter to December  
22 23rd, 1997, I want to ask you a question about the  
23 last sentence on that page that goes over into the  
24 next page, if you will. Take a moment, take a look at  
25 it. So I can understand the basis for that statement.

1 A Okay.

2 Q You have the letter. And I don't have a  
3 copy here.

4 A You can read it.

5 Q It says "As things stand now we can enter  
6 the premises and cut so long as the trees continue to  
7 stand that were standing in 1969."

8 A That's what it says.

9 Q Is that what it says? Okay. So with  
10 regards to the, if you will, the trees that were  
11 standing, that were standing in 1969 that had not been  
12 cut by Matson, prior to this verdict, was it at least  
13 your understanding that Matson could go back and get  
14 those trees, is that correct?

15 A Yes.

16 Q Okay. With regards to trees that came in  
17 existence after 1969, was it your understanding, at  
18 least from the jury verdict, that those belonged to  
19 Carlisle?

20 A According to the jury verdict.

21 Q So the answer is yes?

22 A Yes, according to the jury verdict.

23 Q Okay. With regards to the, if you will,  
24 with regards to trees that were in existence in 1969  
25 that had not been cut by Matson, did those exist



1 but in that 7 or 800 acres of forest land, is that  
2 correct?

3 A That would be my understanding.

4 Q With regards to a quantification of the  
5 trees that remained, that Matson had not yet taken as  
6 of the jury verdict, did you have a sense as to board  
7 feet or number of trees or a dollar amount of trees  
8 that still remained on what I'll call the 1969 trees  
9 that Matson had not taken?

10 A I couldn't tell you how many board feet. I  
11 did visit the property and that's where I'm getting my  
12 approximations of sizes of things as I was there.  
13 Observed what had been taken, what was still standing.  
14 There was a requirement that they had to be 12 or 14  
15 inches in diameter before they could be cut. Which  
16 probably, you can tell when a tree has reached a  
17 certain age based upon how big it is.

18 So determining what was in existence in '69  
19 would probably be relatively easy, and I would assume  
20 most of what would have been standing would have been  
21 standing in '69 based upon the limitations of size of  
22 trunk --

23 Q Okay.

24 A -- that they went to. They also didn't  
25 divide by that. They took down trees that were much

1 larger than that and limited themselves to trees I  
2 believe somewhere in the neighborhood of 16 inches  
3 rather than going to take the ones that were 12. As a  
4 result, there would have been a considerable amount of  
5 trees still standing in that forested area as of the  
6 date of the trial.

7 Q That's what I'm talking about.

8 A And my view, when I was there, there were a  
9 lot of trees that were of significant size still  
10 standing on that property when I visited.

11 Q What I'll call residual 1969 trees or --

12 A Oh, yeah, they had to have been they were  
13 of such size.

14 Q And from your discussion with the foresters  
15 of Matson, a dollar value, your rough estimate? Are  
16 we talking about 5 or \$10,000 worth of lumber or are  
17 we talking about something more significant than that?

18 A Oh, it would be more significant than that.  
19 How much, I don't know. Because the verdict didn't  
20 follow the documents.

21 Q Okay.

22 A The documents would have given Matson the  
23 right to all of the timber in the forested area. The  
24 verdict for some strange reason comes up with a  
25 different calculation and eliminated a substantial

JAMES HALL

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ALBERT CARLISLE )  
VS ) C. A. No. 04-25 Erie  
BARTONY, HARE & EDSON; )  
SCOTT M. HARE, ESQUIRE )  
HENRY E. BARTONY, JR. )  
ESQUIRE and JOHN JAY V. )  
EDSON, ESQUIRE )

TRANSCRIPT OF PROCEEDINGS

Of the depositions of LAINARD BUSH and JAMES HALL  
taken on Friday, February 3, 2006 commencing at 10:00  
a.m. at the offices of ANDREW J. CONNER, ESQUIRE, 23  
West Tenth Street, Erie, Pennsylvania.

APPEARANCES:

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Avenue, Pittsburgh, Pennsylvania (For the Defendant)

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I N D E X

Witness	Examination by:	
	Haber	Conner
Lainard Bush	3/48/54	39/53
James Hall	56	--

E X H I B I T S

Bush Deposition Exhibit 1 (Deed of 1973)	29
Bush Deposition Exhibit 2 (Praecipe for Writ of Summons)	40
Bush Deposition Exhibit 3 (Write filed June of '98)	46
Hall Deposition Exhibit 1 (Stipulation for dismissal 12/15/97)	60
Hall Deposition Exhibit 2 (Damage Report by Hall)	69
Hall Deposition Exhibit 3 (October 7, 2005 Report by Hall)	74

James Hall

1 meetings?

2 A. Yes.

3 Q. And that was your understanding?

4 A. Yes.

5 Q. Was there any discussion in this meeting at  
6 the farm prior to the jury trial what damages we were going  
7 to take out of the trial?

8 A. What damages we were going to take out of the  
9 trial?

10 Q. What damages you weren't going to seek at the  
11 federal trial?

12 A. There may have been, I don't recall  
13 specifically.

14 MR. HABER: I have no further questions.

15 MR. CONNER: That's all the questions we have.

16 \* \* \*

17 JAMES FRANCIS HALL, having been duly sworn, was  
18 examined and testified as follows:

19 DIRECT EXAMINATION

20 BY MR. HABER:

21 Q. Would you state your full name?

22 A. James Francis Hall.

23 Q. Mr. Hall, you were present during the  
24 deposition of Mr. Bush?

25 A. Just moments ago, yes, I have.

James Hall

1 A. '93. I say that with a question.

2 Q. What was your position with the Commonwealth?

3 A. My last position was assistant district  
4 forester for Northwestern Pennsylvania.

5 Q. When did you first meet Mr. Carlisle?

6 A. A meeting at Mr. Lainard Bush's house prior to  
7 the Pittsburgh trial and that would have been probably '95,  
8 but I couldn't give you a date on that for sure.

9 Q. How were you contacted to serve as an expert  
10 or help Mr. Carlisle in the federal trial?

11 A. Mr. Carlisle called me.

12 Q. Do you know how he learned about you?

13 A. Through a man by the name of Jim Bissel who  
14 works for the Cleveland Museum of Natural History.

15 Q. Do you recall when this meeting occurred in  
16 Mr. Bush's house?

17 A. Not the exact date, no, sir.

18 Q. But it was sometime -- do you recall the year?

19 A. It was -- the trial was --

20 Q. The trial was in December of 1997?

21 A. Right. It would have been more than a year  
22 before that but I wouldn't want to give you a date without me  
23 looking at my schedule.

24 Q. Do you recall who was at this first meeting  
25 when you first met Mr. Carlisle?

James Hall

1           A.       They were based on records Matson provided,  
2   yes.

3           Q.       You were present when Mr. Bush discussed a  
4   meeting that occurred in 1997 at his house on the Clough Farm  
5   regarding discussions about a potential second lawsuit?

6           A.       I was present at that meeting, yes.

7           Q.       Do you recall discussions about pursuing  
8   damages in another lawsuit?

9           A.       This is my first meeting there this occurred.  
10   What I recall was that Mr. Hare wanted to simplify the  
11   lawsuit and wanted to break it down into two parts; one part  
12   being contractual, the other part being damages.

13           He did not speak of a second lawsuit as such, because  
14   -- it was just assumed, at least on my part. Part of the  
15   reason why we didn't go into measuring the stump diameters is  
16   he didn't want to add more confusion to the jury, so we were  
17   simplifying it to just the contract at that time.

18           Q.       Did he indicate to you that he wanted to -- or  
19   do you recall him saying that he wanted to limit it to the  
20   contract because there was a 20-year statute of limitations  
21   on the contract and other claims might have a shorter statute  
22   of limitations?

23           A.       I don't recall him talking about a statute of  
24   limitations on the contract. I remember him talking about a  
25   seal that I got the impression meant that it was open forever

James Hall

1 Q. And those lawsuits are both filed in Warren  
2 County?

3 A. Yes.

4 Q. After the jury verdict did you ever attend a  
5 meeting with Mr. Hare?

6 A. Immediately after, yes, we did.

7 Q. When you say immediately after --

8 A. I mean we went out together afterwards and  
9 discussed what happened and talked to the jury and had a  
10 general confab between us on what happened and what didn't  
11 happen, and what we expected to happen down the road, yes.

12 Q. And this was on the day of the verdict?

13 A. Yes.

14 Q. And what was Mr. Carlisle's reaction to the  
15 verdict?

16 A. His first reaction to the verdict was the same  
17 as mine, we were happy that we prevailed in all issues  
18 brought forth.

19 He was disappointed that we didn't succeed in  
20 bringing A and B forth, so he was looking forward to more and  
21 that's what Scott had said to him right afterwards because he  
22 knew Bert was disappointed.

23 Scott had said: Bert, we've won, and I can remember  
24 him saying that because we just had finished talking to the  
25 jury outside and he says: We won, Bert. This sets the stage



James Hall

1 for the next step.

2 Q. Did Mr. Hare indicate what the next step would  
3 be? What you could recover in the next step?

4 A. No.

5 Q. It was just this isn't over, we may file  
6 another lawsuit.

7 A. He didn't even say we may file another lawsuit  
8 but when he said the next step, I assumed that, and it was  
9 pretty clear that that's what was on his mind.

10 Q. Was there any discussion about what would be  
11 sought in the next lawsuit?

12 A. He used the term damages all the time.

13 Q. Anything specific about what type of damages?

14 A. Not at that time specific that I'm aware of.

15 Q. After this verdict, after this meeting on the  
16 day of the verdict, did you ever have any further discussions  
17 with Mr. Hare?

18 A. No, I didn't.

19 Q. You had discussions with Attorney Krembs  
20 because he asked you to prepare a damage analysis, correct?

21 A. Yes.

22 Q. Did Mr. Krembs ever criticize what Scott Hare  
23 had done?

24 A. Not in my presence he never did.

25 Q. Did Mr. Carlisle ever tell you that Mr. Krembs

James Hall

1 had criticized what Scott Hare had done?

2 A. Not that I'm aware of. As far as I was  
3 concerned and I thought that -- even though Mr. Krembs was  
4 now involved, we were still going on Scott Hare's  
5 recommendations and Scott Hare's actions before.

6 Q. Why did you have that understanding?

7 A. Because Mr. Krembs was an Ohio attorney.

8 Q. Scott Hare never represented you, did he?

9 A. No.

10 Q. Who paid you for your expert services in the  
11 federal court action?

12 A. Mr. Carlisle.

13 Q. Paid you directly?

14 A. Yes.

15 MR. HABER: That's all the questions I have.

16 MR. FRYLING: I don't have anything.

17 MR. CONNER: We don't have any questions.

18 We'll attach the exhibits to the transcript.

19 \* \* \*

20 (Deposition concluded at 12:20 p.m.)

21

22

23

24

25

HARE I

1

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE WESTERN DISTRICT OF PENNSYLVANIA  
3                   - - -  
4   ALBERT T. CARLISLE, PLAINTIFF,       )  
5                   Plaintiff,                )  
6                   vs.                        ) Civil Action  
  ) No. 04-25 ERIE  
7   BARTONY, HARE & EDSON; SCOTT M.       )  
  HARE, ESQUIRE; HENRY E. BARTONY,       )  
8   JR., ESQUIRE and JOHN JOY V. EDSON, )  
  ESQUIRE, Defendants,                )  
9    )  
  ) Defendants.  
10    )  
11                   - - -

12                   Deposition of SCOTT M. HARE, ESQUIRE  
13                   Thursday, September, 1, 2005  
14                   - - -

15                   The deposition of SCOTT M. HARE, ESQUIRE, one of  
16   the defendants herein, called as a witness by the  
17   plaintiff, pursuant to notice and the Federal Rules of  
18   Civil Procedure pertaining to the taking of  
19   depositions, taken before me, the undersigned, Jessica  
20   L. Tapia, a Notary Public in and for the Commonwealth  
21   of Pennsylvania, at the offices of David L. Haber,  
22   Esquire, 602 Law & Finance Building, 429 Fourth  
23   Avenue, Pittsburgh, Pennsylvania 15219-1503,  
24   commencing at 10:02 o'clock a.m., the day and date  
25   above set forth.

21                   - - -  
22                   COMPUTER-AIDED TRANSCRIPTION BY  
23                   MORSE, GANTVERG & HODGE, INC.  
24                   PITTSBURGH, PENNSYLVANIA  
25                   412-281-0189  
26                   - - -

1 APPEARANCES:

2 On behalf of the Plaintiff:

3 Conner Riley & Fryling:  
4 Andrew J. Conner, Esquire  
5 James R. Fryling, Esquire  
6 17 West Tenth Street  
7 P.O. Box 860  
8 Erie, Pennsylvania 16512

9 On behalf of the Defendants:

10 Weinheimer, Schadel & Haber, P.C.:  
11 David L. Haber, Esquire  
12 602 Law & Finance Building  
13 429 Fourth Avenue  
14 Pittsburgh, Pennsylvania 15219-1503

15 - - -

16 ALSO RECORDED VIA VIDEOTAPE

17 - - -

18  
19  
20  
21  
22  
23  
24  
25

1 SCOTT M. HARE

2 One of the defendants herein, called as a witness by  
3 the plaintiff, having been first duly sworn, as  
4 hereinafter certified, was deposed and said as  
5 follows:

6 THE VIDEOGRAPHER: This begins the  
7 deposition of Scott M. Hare, Esquire. The time  
8 is 10:02 a.m. The court reporter may now swear  
9 in the witness.

10 MR. CONNER: For the record, my name is  
11 Andy Conner and I represent Albert T. Carlisle as  
12 a plaintiff.

13 Mr. Haber?

14 MR. HABER: David Haber. I represent the  
15 defendant Scott M. Hare and the other defendants  
16 named in the caption.

17 MR. CONNER: Fine.

18 EXAMINATION

19 BY MR. CONNER

20 Q Good morning, Mr. Hare, I introduced  
21 myself.

22 MR. CONNER: I think the record should  
23 reflect that these are the depositions taken  
24 pursuant to notice, pursuant to the federal rules  
25 of civil procedure, that all of the objections,

1       except as to the form of the question, are  
2       reserved until the time of trial.

3               Is there any other stipulations, Mr. Haber?

4               MR. HABER: No.

5       Q       Mr. Hare, I introduced myself, my name is  
6   Andy Conner. I'm going to be asking you some  
7   questions in these proceedings. I'm sure from your  
8   legal experience, you are familiar with depositions,  
9   are you not?

10       A       I have attended and taken depositions, yes.

11       Q       Sure. If, by chance, I ask a question that  
12   you do not hear, or you do not understand, please, ask  
13   me to repeat it or restate the question because I want  
14   to make sure you hear the question and understand the  
15   question.

16               Is that fair enough?

17       A       Sure.

18       Q       If, by chance, you need a document to refer  
19   to and/or to answer the question, please, either ask  
20   your counsel or ask us because I think we have a  
21   complete copy of the file here, although we have not  
22   marked all of those as exhibits, but the complete file  
23   is available, so just ask us for the documents.

24       A       I will do that.

25       Q       Lastly, if you want to take a break at any

1 time for any reason, please, let us know because we  
2 will be more than happy to accommodate you for that.

3 A Thank you.

4 Q Again, for the record, would you state your  
5 full name, please.

6 A It's Scott Michael Hare.

7 Q And your age, sir?

8 A 37.

9 Q And your date of birth?

10 A September 27th, 1966.

11 Q And your profession and occupation is?

12 A I'm an attorney, I practice law in the  
13 Commonwealth of Pennsylvania.

14 Q Where do you currently reside?

15 A In Pittsburgh.

16 Q Where in Pittsburgh?

17 A In the Squirrel Hill Area.

18 Q A suburb of Pittsburgh?

19 A It's a neighborhood that's actually within  
20 the city limits.

21 Q And your professional address is what?

22 A It's 1801 Law & Finance Building, and  
23 that's at 429 Fourth Avenue, Pittsburgh.

24 Q That's the building we are in?

25 A The building we are in, that's correct, a

1 Q I'm just asking about the experience that  
2 you may have had in the '93, '94 time period while you  
3 were with Bartony & Hare and prior to Mr. Carlisle,  
4 what experience, if any, you had in either searching  
5 titles or asking somebody else to search titles and/or  
6 going to the recorder of deeds office to look at  
7 deeds?

8 A I can't recall either way.

9 Q Okay. Did you believe that you had the  
10 expertise to do a title search?

11 A Are you asking whether I believed in 1993  
12 and '94 that I had the expertise to do a title search?

13 Q Yes.

14 A I don't know if I ever gave that any  
15 thought.

16 Q There was never an occasion that required  
17 you to give any thought to that issue; is that  
18 correct?

19 A Certainly not that I recall. Can I just  
20 ask you to keep your hands down. I can't see you.

21 Q No problem.

22 How about with regards to going to the  
23 recorder of deeds office to look for whether or not a  
24 document was recorded in the recorder of deeds office;  
25 had you ever done that prior to your representation of



1 in the initial meeting?

2 A No. I believe what I said was, "I'll  
3 review these and we can talk further about whether  
4 there's something that we might want to move forward  
5 on."

6 Q Did he indicate or outline to you any  
7 result that he hoped to achieve?

8 A Yes, he did.

9 Q Tell me, in summary, what he outlined to  
10 you as the result that he was hoping to achieve?

11 A He wanted the timber company to be off the  
12 property.

13 Q And the timber company, was that identified  
14 at that point in time as Matson?

15 A Matson was the entity, as of that point,  
16 that owned the timber rights. I don't recall whether  
17 Bert was able, at our first meeting, to identify that  
18 name to me, although I suspect that he did.

19 Q Okay. And did he tell you why he wanted  
20 them off the property?

21 A He wanted his property to be free of  
22 timbering operations.

23 Q Okay. Now, let me just --

24 A He just wanted them to be gone.

25 Q Let me see if we can do this in an orderly

1 you ask Bert whether or not there were any other  
2 agreements that he was aware of that affected the  
3 timber rights other than Exhibit 5, which was the  
4 agreement of sale?

5 A I did. And I asked him, in fact, to give  
6 me any documents that would relate to this in any  
7 fashion.

8 Q Was he aware of any other agreements that  
9 affected the timber rights, other than the agreement  
10 of sale?

11 A I trust that any document that he was aware  
12 of he gave to me. As I said, he gave me a number of  
13 documents.

14 Q All right. Did you ask him whether or not  
15 a title search had been done on the property?

16 A I don't recall if I asked that or not.

17 Q Do you know whether or not a title search  
18 has ever been done on the property?

19 A I don't know if one has been done or not.

20 Q Did you ever ask anybody whether or not a  
21 title search had ever been done?

22 A I don't recall if I asked that question or  
23 not.

24 Q Of anybody?

25 A I don't recall.

1 Q Did you ever ask him whether or not he  
2 conducted a title search of the property?

3 A I don't recall if I ever asked him that.

4 Q That's fine.

5 A I just don't recall. I believe he  
6 represented the seller in preparing this agreement of  
7 sale.

8 Q Did you ever ask Mr. Carlisle whether or  
9 not there was title insurance issued to him in  
10 association with the purchase of the property?

11 A I don't recall if I asked that question or  
12 not.

13 Q And for purposes of completeness, did you  
14 ever become aware of any at any time whether or not  
15 title insurance was issued to that particular  
16 property?

17 A I don't recall ever asking that question or  
18 knowing the answer to that.

19 Q Okay. And maybe again, for purposes of  
20 completeness, you never contacted any title company  
21 that you are familiar with to see whether or not there  
22 was a title insurance policy issued to that property?

23 A I don't believe I ever contacted any title  
24 insurance company for that purpose.

25 Q Let me then see if we can do this in an

1 among the documents that Bert gave to me. I just  
2 don't know for you.

3 Q Were you able to ascertain when Fisher &  
4 Young had acquired the timber rights?

5 A That might be reflected in the 1969  
6 agreement of sale.

7 Q Why don't you take a look at that document,  
8 the agreement of sale, and tell me where it indicates  
9 when Fisher & Young acquired the timber rights to the  
10 Clough Farm?

11 A If you look at page 5 of the agreement of  
12 sale, you'll see a paragraph beginning with the word  
13 "BEING" in all capital letters, and this is after the  
14 long description of the property. "BEING the same  
15 parcels of land with Marion C. Kinkead, widow, by deed  
16 dated March 27, 1969 recorded in the recorder's office  
17 of Warren County."

18 So that references a predecessor conveyance  
19 or a prior conveyance.

20 Q Okay. Did you go look at that deed?

21 A No, I don't believe so. I don't believe I  
22 have ever been in the recorder of deeds office in  
23 Warren County.

24 Q At any time during the representation of  
25 Mr. Carlisle?

1 A At any time, ever.

2 Q Okay. Had you ever requested anybody to  
3 obtain a copy of that deed?

4 A I don't recall.

5 Q Did you have the expertise to obtain a copy  
6 of that deed?

7 A I don't know what you mean by "expertise."

8 If you're asking could I have obtained a  
9 copy, I assume the answer is yes.

10 Q Recognizing you never recall seeing a copy  
11 of that deed at any time.

12 A I don't recall. I might have, but I don't  
13 recall.

14 Q Do you have any independent knowledge,  
15 without seeing the deed, whether or not that conveyed  
16 timber rights?

17 A I don't know the answer to that.

18 Q Let me then go back to the question then.

19 Did you ever see a document that conveyed,  
20 to Fisher & Young, timber rights on the Clough Farm?

21 A I don't know.

22 Q Did you ever attempt to get a copy of that  
23 document from any source?

24 A I don't know.

25 Q Do you know whether or not when you saw the

1 agreement of sale which was marked Exhibit 5 whether  
2 or not that was likely a document that would have  
3 conveyed timber rights to Fisher & Young?

4 A According to Exhibit 5, there was a prior  
5 deed that conveyed the property. So I think that is  
6 likely a document, but I don't know.

7 Q So at least when you were initially talking  
8 to Mr. Carlisle, do I understand that you at least had  
9 knowledge that there may be a document or deed that  
10 conveyed timber rights to Fisher & Young; is that  
11 correct?

12 A According to the agreement of sale, that  
13 seems to be the case.

14 Q And that would be a document separate and  
15 apart from Exhibit 5; is that correct?

16 A That's correct.

17 Q And so maybe to complete the matter, you  
18 have never seen that document at any time?

19 A Again, I don't know whether I have or have  
20 not.

21 Q Can you tell us today, generally, what  
22 Fisher & Young paid for the timber rights?

23 A I have trouble answering that question,  
24 because I don't know whether they paid something for  
25 the timber rights separately from the consideration

1 for the real property. I guess, more importantly, I  
2 don't recall any amount that they paid, so I can't  
3 answer that.

4 Q You can't give us a date as to when they  
5 acquired timber rights?

6 A I believe they purchased this real property  
7 by deed dated March 27th, 1969.

8 Q So is it your understanding at that time  
9 that it was likely that the 1969 transaction conveyed  
10 to Fisher & Young the timber rights they had?

11 A That's certainly what Exhibit 5 suggests.

12 Q So that was the conclusion you drew from  
13 looking at the agreement of sale that in that prior  
14 deed from Kinlead to Fisher & Young, they conveyed  
15 timber rights to Fisher & Young in that transaction?

16 A I can't say that's the conclusion I drew  
17 because I wasn't asked to examine that question. I  
18 can't say I drew any conclusion as to that question.

19 Q Why wasn't that relevant to the issue that  
20 Mr. Carlisle was asking you?

21 A Mr. Carlisle asked me to assess and advise  
22 him regarding his rights under the agreement of sale,  
23 Exhibit 5. That's what we attempted to do.

24 Q I see. You said that the goal of  
25 Mr. Carlisle was to keep the timber company, which is

1 Matson, which derived its rights from Fisher and  
2 Young --

3 A Which became Matson, right.

4 Q -- off his property?

5 A That's correct.

6 Q In the document identifying or conveying  
7 the timber rights relevant as to whether Mr. Carlisle  
8 could keep Matson Timber Company off the property or  
9 not?

10 A I'm not sure I can answer that question.  
11 He asked us to examine his rights under the agreement  
12 of sale. And his objective in that regard was to get  
13 the timber company off the property. By the way, we  
14 achieved that.

15 Q Bottom line is that you are saying that he  
16 defined what you were to look at, and that was this  
17 particular agreement, Exhibit 5; is that correct?

18 A He asked us to advise him, to examine and  
19 advise him regarding his rights under this agreement  
20 of sale.

21 Q Only with respect to the agreement of  
22 sale --

23 A That's what he asked us to look at.

24 Q -- and not generally?

25 A I don't know whether there was a



1 BY MR. CONNER:

2 Q I am showing you what has been marked as  
3 Deposition Exhibit 8.

4 For purposes of the record, identify the  
5 document, please.

6 A This is a copy of a memorandum that I  
7 prepared, addressed to Bert Carlisle, dated  
8 November 3rd, 1994.

9 Incidentally, this document answers one of  
10 your earlier questions, whether John Edson was with  
11 our firm at the time we first began doing work for  
12 Bert. As you can see, this memo is on Bartony & Hare  
13 letterhead and not Bartony Hare & Edson. So  
14 John Edson must have joined our firm after we had  
15 already begun doing work for Bert.

16 Q You prepared this document yourself; is  
17 that correct?

18 A That is correct.

19 Q And the purpose of the document was what?

20 A To provide a memorandum to Bert outlining  
21 some of his rights under the agreement of sale.

22 Q Now, let's just maybe, for purposes of  
23 answering some of the other questions we talked about,  
24 as of November of '94, did you an engagement letter in  
25 effect or a fee agreement with Mr. Carlisle?

1 reasonable strategy?

2 A Yes.

3 Q Now, in addition to that, you had what a  
4 belief, did you not, that he was entitled to mandatory  
5 damages?

6 A At this early stage, we had a belief that  
7 he could assert claims for monetary damages. Whether  
8 he was entitled to monetary damages, of course, was a  
9 fact yet to determine.

10 Q And monetary damages, did that include  
11 damage to his property and also included the value of  
12 trees that were taken by Matson that belonged to  
13 Mr. Carlisle as opposed to Matson?

14 A It is overwhelmingly the latter issue.

15 Q Taking trees that actually belonged to  
16 Mr. Carlisle?

17 A Bert had the sense and wanted to explore  
18 the assertion that all of the timber on the property  
19 should have been conveyed to him. And indeed, as I  
20 recall, that was the principal thrust of the Springer,  
21 Bush & Perry memo. So the concept was that any timber  
22 that had been harvested had constituted money damages  
23 to Bert.

24 Q So he was making that assertion; is that  
25 correct?

1 A That is right.

2 Q And did you investigate whether or not some  
3 or all of the timber that had been taken by Matson  
4 during the 1986, 1994 period was taken in violation of  
5 any other agreement other than the agreement of sale  
6 that's identified here as Exhibit 5?

7 A I'm sorry. I don't understand the  
8 question.

9 Q Other than -- let me see if I can rephrase  
10 it. That was a convoluted question.

11 I think you indicated that the only  
12 document that you were working with that represented  
13 the agreement, that you were working with, is Exhibit  
14 5; is that correct?

15 A To my recollection.

16 Q And with regards to any timber agreement  
17 that Matson or Fisher & Young had, were you aware when  
18 you were writing this memo there was a possibility  
19 that Fisher & Young would have had a timber deed?

20 A I can't recall.

21 Q Do you know what a timber deed is?

22 A A timber deed is a document that conveys  
23 rights in timber as separate from the underlying  
24 estate or the real property.

25 Q Did you have a belief that there was a

1 timber deed that Fisher & Young had that you had not  
2 seen?

3 A I had no information or no suspicion to  
4 that effect.

5 Q From your research, did you have any  
6 knowledge that timber in Pennsylvania may be  
7 considered realty or may be considered personalty or  
8 wasn't that part of your investigation?

9 A Well, that, as such, was not a  
10 particular -- a question we were examining as I  
11 recall.

12 Q Why not?

13 A But I can tell you that I recall  
14 essentially tracking down and reading any cases  
15 relating to timber that I might have.

16 Now, I believe that there were -- with  
17 respect to the realty/personalty dichotomy, I believe  
18 I recall that there was a treatment for certain  
19 purposes, maybe tax purposes, as personalty as  
20 opposed to realty. I can't recall for you now what we  
21 may have learned in that regard.

22 Q Did your research indicate that if it was  
23 to be treated as personalty that it would be  
24 conditional on the timber company taking the timber  
25 off in a set period of time?

1           A       I don't recall anything to that effect.

2           Q       Okay. And did you have independent  
3 knowledge of that separate and apart from your  
4 research that it would be considered personalty that  
5 they had -- the timber company had to take the timber  
6 off in a set period of time.

7           A       That was a notion that Bert had. He -- it  
8 was his view that under the agreement of sale, the  
9 timber company was obligated within, what he termed, a  
10 reasonable time, to take the timber. The agreement of  
11 sale doesn't impose any such limitations.

12          Q       Okay. As a consequence of that, did that  
13 cause you to think there may be other documents or  
14 agreements that you had not seen that had defined the  
15 timber company's right to this timber?

16          A       No. As I read Exhibit 5, this is a clear  
17 and comprehensive statement of what the rights were  
18 under the agreement of sale.

19          Q       Is -- that document defines Fisher &  
20 Young's timber rights on that property?

21          A       This document defines Fisher & Young's and  
22 Bert Carlisle's respective rights on that property.

23          Q       And you are saying that that document is  
24 the document that conveys the timber rights to Fisher  
25 & Young?

1           A       No. This document conveys real property to  
2 Bert and retains to Fisher & Young rights in timber on  
3 the real property, and collateral rights, for  
4 instance, rights to harvest and remove the timber.

5           Q       How did you know, without looking beyond  
6 that document, as to whether or not Fisher & Young had  
7 any timber rights on the property?

8           A       Well, I believe that when I read the  
9 agreement of sale, I understood it to be a lawful and  
10 honest document with respect to the conveyance by  
11 Fisher & Young to Bert Carlisle.

12          Q       Isn't there a possibility that some other  
13 party, other than Fisher & Young, had timber rights at  
14 that time period?

15          A       I'm sure there is always a possibility that  
16 there could be some other claims.

17          Q       Did you disclose that to Mr. Carlisle, that  
18 there was likely other documents that defined whether  
19 or not the timber company, Fisher & Young or Matson,  
20 had timber rights under the document that you were  
21 reviewing?

22          A       I don't know that it was likely that there  
23 were other documents. And I don't recall whether I  
24 had any such conversation with Mr. Carlisle.

25          Q       Did you -- did it cross your mind that it

1 might be reasonable to have a title search done on the  
2 property at that time?

3 A I don't think any consideration was given  
4 to doing that.

5 Q Why was no consideration given to a title  
6 search?

7 A Because I was asked to examine and assert  
8 rights appearing under this agreement of sale.

9 Q Would a title search likely have produced  
10 relevant information as to whether or not Mr. Carlisle  
11 could keep the timber company off the property?

12 A It's impossible to answer that. I don't  
13 know.

14 Q Okay. If I understand it correctly, at  
15 least as of the time of your representation of  
16 Mr. Carlisle, A, you hadn't done a title search; is  
17 that correct?

18 A I don't believe so.

19 Q And, B, do I understand that in your other  
20 representations you had never asked say a title  
21 searcher or a specialist to do a title search for you  
22 in any other piece of litigation?

23 A At any time? I think there have been  
24 occasions when we have had to have done a title  
25 search.

1 Q And when you do a title search, you are  
2 talking about doing a title search in Allegheny County  
3 I assume?

4 A That's all I recall, but I can't say that  
5 there weren't others.

6 Q And with regards to that title search, was  
7 that done by yourself or was that someone else?

8 A No. In cases where I recall that a title  
9 search was called for, we had a title company do the  
10 search or an attorney that does that.

11 Q Was it your understanding that if Fisher &  
12 Young had timber rights on the property; that is,  
13 enforceable timber rights that were passed on to  
14 Matson, that those timber rights would have to be set  
15 forth in a document that was recorded in the recorder  
16 of deeds office?

17 A Yes, that was my understanding. And  
18 Exhibit 5 is that document.

19 Q Okay. So you're saying that that is the  
20 source document, the source document for at least from  
21 your perspective, Fisher & Young's timber rights?

22 A No. Exhibit 5, the agreement of sale, is  
23 the document that was incidentally recorded in the  
24 recorder of deeds office, that accepts and reserves;  
25 that is, retains to Fisher & Young the timber and



1 injunction; is that right?

2 A I'm sorry. Would you give me a page  
3 number?

4 Q Pages 9, 10, and 11 talk about preliminary  
5 and permanent injunctions; is that correct? Did I  
6 read it correctly?

7 A Those pages do discuss injunctive relief,  
8 yes.

9 Q Would I be correct that it was at least  
10 your understanding that Fisher & Young had or Matson  
11 had some timber rights on that property; is that  
12 correct?

13 A They had very definite timber rights.

14 Q Nonetheless, you discussed the possibility  
15 of getting a preliminary injunction and possibly a  
16 permanent injunction.

17 In your mind, did you identify the status  
18 of Matson either as an invitee or as trespasser on the  
19 property?

20 A I believe so, sure.

21 Q In what capacity were they on that  
22 property?

23 A Well, Matson was the successor-in-interest  
24 to Fisher & Young with respect to Fisher & Young's  
25 rights under the agreement of sale which you have

1 marked as Exhibit 5.

2           We investigated the succession of entities  
3 who held those rights, culminating in the Matson  
4 entities. I say that because there was actually two  
5 Matson entities, Matson Hardwoods and Matson Lumber  
6 Company. And there was, at one point, a transfer of  
7 interest from one to the other, which incidentally,  
8 Bert was unaware of. We actually discovered that.

9           So at the end of that chain of interest, if  
10 you will, Matson was on the property as a licensee. I  
11 don't think invitee is the proper term. As a licensee  
12 with reference to the rights under the agreement of  
13 sale.

14       Q       So Matson's rights were a derivative from  
15 your analysis, from the succession in the agreement of  
16 sale that has been marked as Exhibit 5; is that  
17 correct?

18       A       The reservations of rights, that's correct.

19       Q       Was it your understanding that they still  
20 had timber rights during the 1986 and 1994 agreement,  
21 1986 1994 time period based on that agreement?

22       A       Yes, that was the understanding.

23       Q       Okay. And if by chance --

24       A       Pardon me. The scope of the rights was  
25 very much in dispute.

1 Q I understand. But, nonetheless, they had  
2 rights; is that correct?

3 A Correct.

4 Q And because they had ongoing rights, they  
5 would be considered a licensee?

6 A Correct.

7 Q If, by change, the rights, for whatever  
8 reason, because of the effect of the other agreement  
9 you may not have seen that have expired, there was a  
10 chance they could have been a trespasser between the  
11 1986, 1994 time frame?

12 A I can't answer that question.

13 Q You didn't see the other documents?

14 A Not just that. Your question presupposes a  
15 whole universe of possibilities that I just can't -- I  
16 can't give you a useful answer.

17 Q Okay. If they were -- just for full  
18 purposes of this document and getting an injunction,  
19 if they were a trespasser as opposed to a licensee,  
20 that would affect your legal advice, would it not, in  
21 regards to the recommendations with regards to  
22 obtaining a permanent or preliminary injunction, would  
23 it not?

24 A Using your predicate, if they were a  
25 trespasser, sure, that would bear on the question.

1 Q That would enhance Mr. Carlisle's chances  
2 of getting an injunction, would it not?

3 A I think so.

4 Q Okay. And that was one of his goals, was  
5 it not, to try to keep the timber company completely  
6 off the property?

7 A To remove them from the property, sure.

8 Q And you were trying to find out any  
9 possibility to do that, were you not?

10 A Sure.

11 Q Okay. Now, let's go then to the claims for  
12 monetary damages, which I believe are summarized in  
13 paragraph 4, which are discussed on 11 and 12, pages  
14 11 and 12, if you have the document in front of you.

15 A Again, you recognize this is a preliminary  
16 memo. I had not even been to the property. We  
17 weren't purporting through this memo to give any final  
18 or definitive statement of opinion or rights. This is  
19 some preliminary reflection, if you will.

20 Q Understood. And you are saying that he  
21 was -- essentially, generally, he was entitled to seek  
22 damages to compensate for any monetary losses he had  
23 suffered; is that correct?

24 A Sure. You are reading from page 11,  
25 correct.

1 Q Let's just go down to trespass the  
2 property, there is a Section A, that would be breach  
3 of contracts. And the contract that we're talking  
4 about is the contract that would be represented by  
5 Exhibit 5; right?

6 A The agreement of sale, correct.

7 Q But then in addition to that, he would also  
8 have a claim for trespassing the property; correct?

9 A Right, that's right.

10 Q And again, the status of Matson  
11 was critical, either a licensee or invitee or  
12 trespasser, would be a critical issue with regards to  
13 the claims for trespassing the property, would it not?

14 A Well, in whatever it is, the extent to  
15 which it contained itself within its scope of rights  
16 or exceeded its scope of rights.

17 Q Sure. Right. In other words, if it  
18 confined itself within the -- or if it got outside its  
19 rights as a licensee, that would mean that you would  
20 be entitled to trespassing; is that correct?

21 A Sure, for instance, the no cut zone which  
22 became the basis for an award of damages.

23 Q And conversely, if they didn't have any  
24 rights at all, that would enlarge his claims of  
25 damages, would it not?

1           A       It likely would, sure.

2                   THE VIDEOGRAPHER: We have five more  
3       minutes.

4                   MR. CONNER: Just give me a little bit  
5       more.

6 BY MR. CONNER:

7           Q       Lastly, there was a constructive trust  
8       discussion, page 12, item C; is that correct?

9           A       That is correct.

10          Q       Maybe I can ask you a question. It says  
11       "In particular, to the extent Matson has received  
12       revenues from harvesting timber in violation of your  
13       rights, such revenues rightly belong to you and Matson  
14       is merely a constructive trustee of such revenues on  
15       your behalf."

16                   What did you mean by that?

17          A       What I meant by that, again, this is sort  
18       of brainstorming early in the case, and I'm suggesting  
19       to Bert a number of possible claims and a number of  
20       possible remedies that we might seek. I'm sorry. The  
21       theory underlying the constructive paragraph is simply  
22       that if Matson had converted timber in which he had  
23       ownership interests, and got revenues from that  
24       timber, that he has a claim to those funds. Of  
25       course, that is duplicative of the same claims

1 arising, the same damages arising under a breach of  
2 contract claim.

3 Q Okay. And in summary, there was a -- you  
4 were outlining to him, Mr. Carlisle, he may have a  
5 right to the revenues that Matson receive from cutting  
6 timber that was in effect Mr. Carlisle's timber,  
7 between the 1986 and 1994 time period?

8 A Right, that's the notion here on page 12.

9 Q So one of your parts of the investigation  
10 would be to determine as to what timber Mr. Carlisle  
11 owned and what timber Matson owned during that time  
12 period that was cut by Matson; is that correct?

13 A Yes, as amended by the fact that there may  
14 have been or we argued that there were changes in  
15 ownership interest over time.

16 Q Now, let me just go to the next document  
17 and then we can take a break at the right time.

18 (Thereupon, Hare Deposition Exhibit No. 9  
19 was marked for identification.)

20 Q I am going to show you what's been marked  
21 as Exhibit 9, and it's entitled Projected Litigation  
22 Budget Albert T. Carlisle v. Timber Matter.

23 And first of all, can you identify the  
24 document?

25 A Yes. I don't recall if Bert asked us to do

1 exclude that in this document.

2 Q Okay. So in recognizing -- first of all,  
3 the document that is in front of you, would this be  
4 considered your engagement letter?

5 A Well, I would call this a projected  
6 litigation budget.

7 Q This is different than an engagement  
8 letter?

9 A This is -- when I described to you earlier  
10 the form of my engagement letter, I was describing a  
11 document other than Exhibit 9.

12 Q Okay. Fine. And as part of your  
13 pre-complaint work, in addition to researching the  
14 law, you were going to try to do as careful research  
15 as you could of the facts that related to  
16 Mr. Carlisle's case?

17 A One tries.

18 Q Okay. Can you tell me, as part of doing  
19 your factual investigation, just in summary what you  
20 did to investigate the facts?

21 A Well, to a very great extent, I relied on  
22 Bert to provide information to me and documents to me  
23 keeping in mind he had owned this property for 25  
24 years by the time he came to me. He had been  
25 represented by a number of attorneys in connection



1 with this property over that period of time. And he  
2 was my client, and more importantly, for purposes of  
3 your question, was the person, the witness, if you  
4 will, with the best access to the facts. So I relied  
5 very heavily on Bert to provide me with the  
6 information we needed to have.

7 Q What other sources of information did you  
8 rely on?

9 A I don't know. There were a number of  
10 people involved. Bert's friend Lainard Bush, provided  
11 a great deal of information. Steve Madewell, as time  
12 went on, was a source of information to me.

13 Q Any other sources other than Bert? Did you  
14 ask any people what the sources of Fisher & Young's  
15 timber rights were, do you recall?

16 A I don't recall.

17 Q Did you ever ask them as to whether or not  
18 there was any document, separate and apart from  
19 Exhibit 5, that conveyed to Fisher & Young timber  
20 rights on this property?

21 A I don't recall.

22 Q Okay. I'd like to take a break then.

23 THE VIDEOGRAPHER: This ends tape 1. The  
24 time is 12:01 p.m. We are off the record.

25 (Recess taken.)

1 reference on the top, "Remembers Matson map"; is that  
2 correct?

3 A On the left, "Remembers Matson map," it  
4 says that, yes.

5 Q And then below that, there's a reference to  
6 a Laurie, I will spell it, S-e-k-e-r-a-k.

7 Who did you understand she was?

8 A I don't recall. I believe that she -- she  
9 lives in the area, that is, Warren County. She may  
10 have been an employee of the county. She may have  
11 worked in the courthouse. I'm not sure.

12 Q She gives a phone number of 814-726-9750?

13 A That's a number that I wrote. I believe  
14 her name and number were given to me and I believe I  
15 called her.

16 Q You did call her?

17 A I believe.

18 Q And if you go to the next exhibit, take a  
19 look at Exhibit 11, if you will, if you could identify  
20 that document?

21 A I can. This is a copy of notes of a phone  
22 call that I made on March 31st, 1997. A phone call  
23 with Laurie Sekerak, and the notes of my conversation  
24 with her. Apparently she -- I guess she may be  
25 affiliated with an entity called REM Abstract.

1 Q Okay. And she is identified as, "Does  
2 title searches"?

3 A That is what my notes say.

4 Q And was it your understanding that she did  
5 title searches in Warren County; is that correct?

6 A I assume so.

7 Q And that's what is identified there, that  
8 she is in Warren County.

9 Would she be doing title searches in other  
10 counties?

11 A You're asking me to make, to draw a  
12 conclusion. It's a reasonable conclusion but I don't  
13 know that as a factual matter.

14 Q Did you ask her by chance whether or not  
15 she had ever done a title search on that property?

16 A I don't recall if I asked her that  
17 question. I believe that the purpose in my calling  
18 her was to locate a copy of the map that is referenced  
19 in other documents but that has seemed to be  
20 misplaced. No one had a copy of it. I think the  
21 purpose was in seeing whether she had or could find a  
22 copy of the map. We thought that maybe the map had  
23 been recorded. I think that's why I was speaking with  
24 her.

25 Q It looks like from that document, at least

1 in 1997 -- we are getting ahead of the time period, we  
2 are getting out of sequence, we are a couple of years  
3 ahead of time. The reason why I was asking is, that  
4 once she identified herself to you as somebody that  
5 did title searches, why didn't you ask her to do a  
6 title search?

7 A Well, I think we have covered this. There  
8 did not seem to be any purpose or need in doing that.  
9 This is a piece of property that Bert had purchased 25  
10 or more years earlier. He was represented by an  
11 attorney. I suppose I trusted that his attorney at  
12 the time did whatever title search was necessary at  
13 the time he bought the property.

14 Q Okay. But following up that for a second,  
15 he bought the property in 1970?

16 A 1969.

17 Q And wasn't there a chance and risk that  
18 whatever timber rights Fisher & Young had acquired and  
19 in a sense Matson was asserting were represented by  
20 timber deeds and timber agreements that were filed  
21 after the time period that Mr. Carlisle acquired the  
22 property?

23 MR. HABER: Do you understand that  
24 question?

25 THE WITNESS: No, I don't.

1 BY MR. CONNER:

2 Q Was there a chance in this time period you  
3 represented Mr. Carlisle that Matson was asserting  
4 rights that Fisher & Young had on this property based  
5 on deeds and agreements that were recorded some time  
6 after the time period that Mr. Carlisle was deeded the  
7 land?

8 A There was no reason to believe or  
9 understand or suspect or guess or postulate that that  
10 might be the case. Is it possible, sure.

11 Q So you did not consider that a risk, at  
12 least in representing Mr. Carlisle at that time;  
13 right?

14 A That was not an issue in consideration.

15 Q Okay. From your understanding of the  
16 conveyance law in Pennsylvania, if Fisher & Young's  
17 and hence Matson's rights --

18 A I'm having trouble hearing you.

19 THE VIDEOGRAPHER: Counsel, you need to  
20 move your hand from the microphone.

21 Q Okay. Of your understanding of the  
22 conveyance law in Pennsylvania as it pertained to deed  
23 and timber rights, what was your understanding at that  
24 time period as to whether or not Fisher & Young's or  
25 Matson's rights were enforceable if they were recorded

1           A       A number of things. In large measure,  
2 count V is duplicative, it's a different legal theory  
3 and a different legal action, but duplicative of other  
4 claims appearing in the complaint. The trespass count  
5 in count V alleges that the defendants committed a  
6 trespass by removing trees to which they had no  
7 rights, by conducting operations on the property  
8 outside the time periods when they are permitted to do  
9 so, by timbering in a reckless fashion, a reckless,  
10 careless and negligent fashion, which caused  
11 unnecessary damage to the property, including damage  
12 to the streams and land, cutting trees within the no  
13 cut zone, which are trees outside the rights of the  
14 agreement. And I think those are all of the premises  
15 giving rise to the trespass count.

16          Q       And in defining as to what extent that  
17 there was trespass by Matson, do I understand that you  
18 were relying on the section in Exhibit 5 which would  
19 be the 1969 agreement of sale?

20          A       That and other terms within the agreement  
21 of sale, correct.

22          Q       I'm talking about that document?

23          A       That's right.

24          Q       You were not relying on any other written  
25 agreement that may have existed between any other

1           A       We can look at the request for production  
2 that I served but I would hope that the answer to that  
3 is yes.

4           Q       Okay. And just for completeness, do you  
5 have any recollection if they ever produced any  
6 document that would be considered a timber deed?

7           A       I don't recall.

8           Q       Did you ever ask -- Mr. Fossee represented  
9 Matson; is that correct?

10          A       Chet Fossee, correct.

11          Q       Did you ever ask Mr. Fossee, first of all,  
12 whether or not he had any timber deeds to the  
13 property?

14          A       I think that's the same question.

15          Q       I'm saying verbally.

16          A       I don't recall.

17          Q       Separate and apart from asking you about  
18 the verbal request for timber deeds, did you ever ask  
19 Mr. Fossee for the document or documents separate and  
20 apart from what we have identified here as Exhibit 5  
21 which had conveyed to Fisher & Young the timber rights  
22 and prior ownership of timber rights?

23          A       I apologize. Once again, your question  
24 lost me.

25          Q       I'm just trying to find out if, in your

1 VI and count VII were essentially the same? And I'm  
2 just trying to find out what you're thinking was.

3 A Subject to some fine tuning, yes.

4 Q In count V, didn't you also include any  
5 claims for damages from the property that were not  
6 proper practices in harvesting that would not be  
7 covered by the conversion count?

8 A That's why I said earlier that the  
9 conversion is duplicative in part of the claims under  
10 count V.

11 Q Okay. Let's go to the next set of  
12 exhibits.

13 Some time in the '95, '97 time period, you  
14 would have taken a deposition of Mr. Matson; is that  
15 correct?

16 A I believe so.

17 Q Just out of curiosity, in the deposition,  
18 did you ask Mr. Matson, by chance, what document or  
19 documents gave him timber rights that he was asserting  
20 or exercising in the '98 -- 1986, 1994 time period?

21 A I think the transcript would be the best  
22 evidence of that. I don't recall.

23 Q You don't have any recollection of that?

24 A I don't recall.

25 Q You don't recall if he made a response to



1           A       I don't recall.

2           Q       Okay. Now, at the time you filed the  
3 pre-trial narrative statements, do I understand you  
4 had not yet received the expert report from Tim Hall  
5 regarding recoverable monetary damages?

6           A       That's correct.

7           Q       In the interim, you had received a document  
8 from Matson identifying the timbers taken off the  
9 property in the discovery proceedings; is that  
10 correct?

11          A       It assume so. I believe we received, in  
12 discovery, records identifying the value of timber and  
13 probably a breakdown by timber species that Matson had  
14 removed over time.

15                   (Thereupon, Hare Deposition Exhibit No. 14  
16 was marked for identification.)

17          Q       Take a look, if you would, at Exhibit 14,  
18 if you will. The exhibit sticker is inside. Take a  
19 look. Can you possibly identify the document as the  
20 document that you obtained in the discovery  
21 proceedings?

22          A       It's not Bates numbered so I can't be sure  
23 when or where this came from. And it doesn't have any  
24 reference, other than some references to the Clough  
25 Farm. So I can't be sure from the face of this

1 document who generated it. But it looks like this may  
2 have been -- it looks like this may be some records  
3 from Matson lumber of their harvesting and perhaps  
4 sales.

5 Q Let me see if I can handle this.  
6 Generally, did you obtain or request and obtain  
7 documents from Matson Lumber Company to, in effect,  
8 summarize the board feet of lumber taken off that  
9 property from 1986 to 1994?

10 A Sure.

11 Q And does that at least appear to be the  
12 type of document that contains that information?

13 A It may be. And I think there were some  
14 other documents as well.

15 Q Okay. And do I understand that that  
16 document would have been passed on to Mr. Hall, who  
17 was a forester familiar with Warren County, so he  
18 could use that and other information for purposes of  
19 preparing the report?

20 A Sure. It would have been passed on to  
21 Mr. Hall and Mr. Carlisle and perhaps others. Again,  
22 I just can't testify that Exhibit 14 is a Matson  
23 document.

24 Q That's fair enough.

25 (Thereupon, Hare Deposition Exhibit No.15

1 Q And you would have sent a copy of this to  
2 Mr. Carlisle on May 7th; is that correct?

3 A Yes, that's what the May 7th cover letter  
4 is.

5 Q It says, "I'm delighted to enclose a copy  
6 of our supplemental pre-trial narrative statement";  
7 correct?

8 A Correct.

9 Q Now, I just want to go to a couple of  
10 recitals in the document.

11 A I'm sorry, which document, the expert  
12 report?

13 Q You have the narrative in front of you, do  
14 you not? Let's just talk about the narrative and we  
15 will go back to the report for a second.

16 A So focusing on the supplemental pre-trial,  
17 is that what you are saying?

18 Q Page 2, where it says "Damages."

19 A Very well.

20 Q It says, "Carlisle has suffered the  
21 following damages," and you talk about loss of value  
22 of all trees wrongfully harvested and removed by  
23 Matson in the amount of \$3,313,281; is that correct?

24 A Correct.

25 Q And then it says, "trebled equals

1 \$10,965,181.20."

2 A Correct.

3 Q Now, with regards to the \$3,655,060.40,  
4 that number would be derived from the Hall report; is  
5 that correct?

6 A That's right.

7 Q Your understanding -- and maybe we can just  
8 round it off. Was is your understanding that Matson,  
9 in a sense, had taken \$3.6 million of timber from the  
10 1986 to 1994 time period?

11 A I believe that is what Jim Hall calculated  
12 the figure to be.

13 Q And did you know the basis upon which he  
14 calculated that figure?

15 A Sure. The basis was the harvest records  
16 that we obtained in discovery from Matson Lumber  
17 company, which reflected board feet and volumes of  
18 timber that had been removed, as I recall, broken down  
19 by species. That, together with the prevailing market  
20 price for those various pieces of timber at the time  
21 they were harvested, enabled Jim Hall to calculated  
22 this figure.

23 Q And just for purposes of completeness, this  
24 would be the value of all of the timber that was  
25 taken; is that correct?

1           A       That's -- as I recall, that is what this  
2 figure represents, namely all of the timber wherever  
3 located on Bert's property.

4           Q       And in Mr. Hall's report, he identified the  
5 amount of board feet that were actually taken between  
6 4 million and 7 million board feet, does it not?

7           A       Okay.

8           Q       You might want to take a look at that?

9           A       Are you asking me --

10          Q       Is your recollection that his report  
11 identified the total amount of board feet?

12          A       I don't have a recollection. I will look  
13 here to see if it says that.

14          Q       If you go to page 7, there is a reference  
15 to board feet.

16          A       I see 4.2 million board feet.

17          Q       Either under the Doyle rule that was  
18 something in excess of 4 million board feet, and under  
19 the International one-quarter inch rule, somewhere in  
20 excess of 7 million board feet?

21          A       That what Jim says, correct.

22          Q       Now, when you get the report from Hall, was  
23 this essentially what you expected as far as the  
24 dollar amounts of timber taken?

25          A       What I expected when?

1 Q In a sense, when you filed the complaint.

2 A No, sir. When I filed the complaint, I had  
3 no idea what the dollar amount would be. We had not  
4 taken discovery.

5 Q I understand that.

6 From your expectations, did you, in fact,  
7 think that the number would be less than that number,  
8 higher than that?

9 A I had no expectation.

10 Q Okay. Now, the number here of total board  
11 feet taken results in a calculation at least by Hall  
12 there's a least 3.6 million of lumber taken between  
13 '86 and '94; is that correct -- as you previously  
14 indicated?

15 A Right. I believe that is his conclusion.

16 Q Did the magnitude of that number, at least  
17 in the time period we're talking about, May of '97,  
18 cause you to think that it might be prudent to go back  
19 and have someone do a title search of that property  
20 for purposes of trying to confirm one way or the other  
21 as to whether Matson had any right to that amount of  
22 timber?

23 A No, sir. If the number had been \$3.00 or  
24 \$300 billion, I would not have been drawn to that  
25 conclusion that you suggest.

1           A       Go back to your question again.

2           Q       I'm just trying to understand what -- after  
3 you received the Hall report, now that you received  
4 the Hall report, it looks like the first report you  
5 had regarding the damages, that is, the dollar amount  
6 of damages that Mr. Carlisle had incurred.

7           A       The \$3.6 million figure would form the  
8 basis for a damage claim under count V and VI and VII,  
9 together, with other counts in the complaint.

10          Q       Understood. So the report gave you, for  
11 the first time, a monetary value that you could  
12 connect to each one of those counts; correct?

13          A       That's correct. And other counts in the  
14 complaint.

15          Q       Understood. With regards to the trespass  
16 count, you pointed out in an answer to a previous  
17 question I asked, there is a claim for damages also to  
18 the property which would relate to Matson's failure to  
19 comply with industry practices regarding timber; is  
20 that correct?

21          A       Yes.

22          Q       There was an additional claim for damages?

23          A       Yes.

24          Q       In the trespass count, but they are not  
25 necessarily in counts V and VI --

1 A That's correct.

2 Q -- for obvious reasons?

3 For purposes of completing that subject  
4 matter, did you have any type of damage report that  
5 summarized the damages that would be recoverable  
6 against Matson in a federal declaratory judgment  
7 action for the failure of Matson to comply with  
8 industry practices?

9 A Yes.

10 Q Okay. Where was that?

11 A That's Exhibit 15.

12 Q Okay. That would also would be the Hall  
13 report, but that would be the damages that were  
14 recoverable from the conduct that were separate and  
15 apart from the \$3.6 million?

16 A Right. He quantifies \$1.7 million in  
17 damages as a result of the damage of timber left  
18 standing. And that is a consequence of what we allege  
19 to be careless, negligent or reckless timber  
20 harvesting outside the best practices that were  
21 standard in the industry.

22 Q That was an additional quantity of damages  
23 that could be recovered in count V but not recovered  
24 in count VI or count VII by definition?

25 A I'm not sure whether the measure of damages



1 is necessarily excluded under count VII. I'd have to  
2 think through that again. I think one could assert --  
3 I think one could potentially assert a conversion  
4 claim with respect to those damages too. I just can't  
5 recall right now.

6 Q With regards to damages that were done that  
7 could be categorized as erosion damages, I'm talking  
8 about -- these would be damages not to timber but to  
9 the property itself --

10 A Right.

11 Q -- in your investigation, did that indicate  
12 that Mr. Carlisle had a claim for such damages?

13 A We had asserted that in the complaint,  
14 query, was, what, if anything, that would constitute  
15 in terms of quantified damages.

16 Q All right. Was there any witness that was  
17 prepared?

18 A Pardon me?

19 Q Was there any witnesses you retained that  
20 were prepared to testify with regards to those  
21 possible damages?

22 A That was a large part of the focus of  
23 Steve Madewell's review.

24 Q And Steve Madewell is who?

25 A Steve Madewell was another consulting

1 the contract and the claims we assert in the  
2 complaint, those were direct damages that we believe  
3 were recoverable. The sorts of damages that you are  
4 talking about were much less concrete, and there was a  
5 real question whether they could even be recovered  
6 much less quantified.

7 Q Now, with regards to the complaint that you  
8 filed, I believe as set forth, in ten counts if  
9 I counted correctly, looking at page 21, at the last  
10 count, without identifying each count by name or  
11 reference, can you tell us whether or not there was  
12 any action for quiet title that would have been within  
13 those ten counts?

14 A I don't think so because I don't think this  
15 is a quiet title action. This is an action to  
16 determine rights under the agreement of sale. And  
17 indeed, that was the focus specifically of the counts  
18 for declaratory relief.

19 Q And just for purposes of completeness, why  
20 was no quiet title action taken?

21 A Because I was neither asked to assert a  
22 quiet title claim, nor was there any reason to believe  
23 that quiet title action was appropriate or advisable  
24 or called for.

25 Q And from your research and knowledge of the

1 law, can a quiet title action be brought to quiet the  
2 title to standing timber?

3 A I believe that is probably true.

4 Q Okay. And by way of -- just, again, for  
5 purposes of completeness, would I understand that from  
6 the time that you were at Reed Smith, you had never  
7 been involved in a quiet title action?

8 A While I was at Reed Smith?

9 Q Yes.

10 A I don't recall.

11 Q At the time that you were with Mr. Bartony  
12 and yourself up until the time you started to  
13 represent Mr. Carlisle, I take it you had never been  
14 involved in a quiet title action?

15 A None that I can recall, but I can't be  
16 sure.

17 Q I take it that the subject of a quiet title  
18 action was never part of your discussions with  
19 Mr. Carlisle?

20 A That's correct.

21 Q Let me then move forward with regards to a  
22 couple other matters, so we can talk about the trial,  
23 and end the pre-trial matters.

24 I notice that Jack Kookogey's name is in the  
25 agreement of sale which is Exhibit 5. I think you

1 pointed out that Jack Kookogey's name is on the  
2 document.

3           You recognize Jack Kookogey is a lawyer, at  
4 least you thought he was a lawyer.

5           A       Correct. That's my understanding.

6           Q       And it looks like he was actively involved  
7 in representing one or more parties in the agreement  
8 of sale upon which you were interpreting on behalf of  
9 Mr. Carlisle?

10          A       I don't know what you mean by "actively  
11 involved," but my recollection is that Mr. Kookogey  
12 was the attorney who drafted the agreement of sale.

13          Q       Okay.

14          A       My recollection is that he did that as the  
15 attorney for Fisher & Young.

16          Q       Did you ever subpoena his file?

17          A       I don't recall. I do recall examining  
18 him. I believe he was a witness at trial. I believe  
19 I cross examined him.

20          Q       You don't recall reviewing his file  
21 separate and apart from that subpoena?

22          A       Well, certainly, I served document requests  
23 on Matson, and certainly I asked that they produce any  
24 documents not only in their possession, custody or  
25 control, but that of their attorneys and accountants

1 and so forth. I don't recall whether we got documents  
2 that came from Mr. Kookogey's office. We may have. I  
3 don't recall.

4 Q Maybe to complete that subject,  
5 Mr. Kookogey would have been an independent contract  
6 or, would he not, as to Matson?

7 A I didn't know what relationship, if any, he  
8 had to Matson. I don't recall. I don't know if he  
9 was asked that question in his testimony at trial. It  
10 might appear on the record.

11 Q In any case, you don't recall issuing a  
12 subpoena to Mr. Kookogey?

13 A I don't recall.

14 Q In the summer of 1997, were you asked to  
15 make a settlement demand in this case on behalf of  
16 Mr. Carlisle?

17 A I don't recall when the topic of settlement  
18 came up and I don't recall whether Bert asked me to  
19 make a demand. I do recall that we actually filed a  
20 motion with the court pursuant to the local rules,  
21 asking that the court refer this case to mediation.  
22 And in fact, we conducted a nearly day-long mediation  
23 in front of Nora Barry Fischer, whose office is across  
24 the street.

25 (Thereupon, Hare Deposition Exhibit No. 17

1           was marked for identification.)

2   BY MR. CONNER:

3           Q       I'm showing you a document that's marked  
4   Exhibit 17. The purports to be a letter of June 24,  
5   '97, prepared by yourself.

6                   Do you recognize it as such?

7           A       I do recognize that.

8           Q       Do you recognize that to be the demand  
9   letter that you prepared and sent in this case?

10          A       That's what it is.

11          Q       And then sent to Mr. Fossee to review?

12          A       Exactly.

13          Q       And sent a copy to Mr. Carlisle?

14          A       That is correct.

15          Q       Do you have a recollection as to what  
16   prompted that settlement demand letter?

17          A       Yes, the mediation session the day before  
18   as I recount in the first sentence.

19          Q       The mediation that took place the day  
20   before, as you have indicated, was there a demand made  
21   at the mediation?

22          A       Yes. The next sentence says, "Let this  
23   letter confirm the demand that we set forth at that  
24   time," the mediation session yesterday.

25          Q       And that was \$5 million?

1           A       \$5 million together with Matson's agreement  
2 to vacate the property.

3           Q       And meaning vacating the property, leaving  
4 the property at that time period and never coming  
5 back?

6           A       Correct.

7           Q       As that was -- as I understand that, that  
8 was one of Mr. Carlisle's primary goals, was it not?

9           A       It was the overriding goal.

10          Q       The overriding goal was to get them to  
11 leave?

12          A       Right.

13          Q       And that was your assignment, to try to see  
14 if you could do that; is that correct?

15          A       My assignment was to assert his rights  
16 under the agreement. And the objective or the goal of  
17 that assignment was to get Matson Lumber off the land,  
18 if possible.

19          Q       Now, at the mediation session, did Matson  
20 make an offer?

21          A       No, Matson refused to make any offer.

22          Q       Subsequently, the sequence of events, the  
23 next letter I have is a July 21st letter that is from  
24 Mr. Fossee, that I don't think is really responsive to  
25 your letter.

1 negotiations.

2 Q Is that what you were trying to do?

3 A Naturally. The timber company was  
4 uninterested in settling and never believed at any  
5 point in the litigation, even after we won, that it  
6 had any liability or exposure.

7 Q What reliance, if any, were you making on  
8 the Hall damage report for purposes of making the \$5  
9 million demand?

10 A Evidently, I had this report in hand at the  
11 time of the mediation and at the time of my letter  
12 demand. So I don't know what reliance I was making on  
13 the Hall report, although the \$5 million figure  
14 certainly is in keeping with the sorts of numbers that  
15 appear in Jim's report.

16 Q Certainly, but there was an indication of a  
17 taking of \$3.6 million in trees and there was another  
18 indication of \$8 million in damages to tree.

19 A That is all premised on the notion, by the  
20 way, that Matson was never entitled to remove anything  
21 because of the provisions under 15(a) and 15(b.) The  
22 court ultimately decided that question against us.

23 Q Just out of curiosity, when that issue was  
24 decide asked against you, and I'm going forward  
25 because that is later in time I believe --



1           A       That's correct.

2           Q       -- were you aware at that time that there  
3 might be a timber deed that passed timber rights from  
4 Mrs. Kinhead to Fisher & Young that may have been  
5 recorded after Mr. Carlisle's?

6           A       Let me see if I can make this easy for you.  
7 I was never aware of that. I'm not aware of that to  
8 this instance. You made a number of references to  
9 that today. I have no information regarding that.

10          Q       Okay. Now, with regards to the \$5 million,  
11 in light of what you just said, did you think that  
12 demand was reasonable?

13          A       As I said, I thought the demand was an  
14 aggressive demand that was intended to bring about  
15 some settlement negotiations. I can also tell you  
16 that the strategy was, if we could get them to go off  
17 the property, even in the absence of any payment of  
18 money damages, we would have achieved our goal.

19                 I believe the thinking was that by building  
20 in a very substantial money component to our initial  
21 demand, we would have substantial room to move on that  
22 aspect of the demand, of the settlement demand, and  
23 including going down as far as to zero in exchange for  
24 getting Matson off the property.

25          Q       That was the primary goal, was to try to

1 figure out a remedy of a procedure that could get them  
2 off the property?

3 A That was the goal. If they wanted to pay  
4 us \$5 million along the way, we would be happy to take  
5 it. No one anticipated or believed or expected at the  
6 time we made this demand that there would be a payment  
7 of \$5 million.

8 Q So, again, just to maybe complete the  
9 subject, I asked you whether or not that was a  
10 reasonable demand or not, and I don't think I got an  
11 answer. Can you tell me whether or not --

12 MR. HABER: I think he did answer. I think  
13 he told you he thought it was an aggressive  
14 demand. I think he explained it to you. You  
15 want a yes or no answer, but he didn't answer it  
16 with a yes or no.

17 MR. CONNER: I understand. Yes. Let me  
18 rephrase the question.

19 BY MR. CONNER:

20 Q Are you able to tell us whether or not it  
21 was a reasonable or unreasonable demand?

22 A I don't know what you mean by reasonable.  
23 I can tell you that I believed it was not only  
24 reasonable but an advisable settlement strategy on our  
25 part to make this demand or I wouldn't have made it.

1 Bert can assert. If Matson owns the timber, Matson is  
2 entitled to damage its own property.

3 Q All right. Maybe just to pursue that for a  
4 second, did Matson ever prove at the time of trial  
5 that they owned that timber?

6 A I don't know if that was an issue in  
7 dispute. I don't know what proof or evidence was  
8 offered on that point.

9 Q All right.

10 A Plaintiff certainly did not -- well,  
11 plaintiff asserted that Matson did not based on  
12 theories and reasons that we have already talked  
13 about.

14 Q But at the time of trial, you don't have a  
15 recollection that Matson affirmatively proved that  
16 they owned the timber other than what I'll call the  
17 1969 agreement of sale between Mr. Carlisle and Fisher  
18 & Young?

19 A I don't think that was an issue in dispute  
20 in the trial.

21 Matson Lumber had filed counterclaims  
22 against Bert Carlisle, including claims for damage by  
23 Bert or his agent to timber owned by Matson Lumber  
24 Company. Had those counterclaims preceded the trial,  
25 who knows, maybe that would have been an element of

1 jury answered was the width of the no cut zone.

2 Q And was the jury finding a 100 foot no cut?

3 A I think that's right. I think they gave us  
4 the widest possible reach of the no cut zone, which of  
5 course, has the effect that forever after, the timber  
6 company is forbidden from that 100 foot stretch.

7 Q And they gave you about 25 percent of the  
8 damages that Mr. Hall estimated?

9 A Yeah. So for Allegheny County or Western  
10 Pennsylvania, that is not a bad jury verdict.

11 Q Let me then go back to the trial itself.  
12 With regards to the dismissal of any counts, do you  
13 have any recollection of any of the counts being  
14 dismissed?

15 A Sure, I do.

16 Q What is your recollection of that?

17 A You're speaking, I gather, other than  
18 summary judgement?

19 Q Yes.

20 A Okay. We -- as I say, when we learned at  
21 the final pre-trial conference that the court had  
22 grant, sua sponte, the motion for summary judgement,  
23 at least in part, I forget what all defendants were  
24 asking to be dismissed in their original motion, at  
25 that point, we had to do some pretty quick and pretty

1 extensive restructuring of our trial strategy. And in  
2 connection with that, we talked to Bert, and the idea  
3 of carving out a part of the case to pursue in a  
4 separate action. The idea, the underlying strategy  
5 was that we're going forward. Obviously, these counts  
6 for declaratory relief were of principal importance to  
7 him. You see those are the counts that appear at the  
8 front end of the complaint, counts I and II and so  
9 on. We thought that it would be worthwhile and  
10 advisable to have some damage claims in there and even  
11 a couple of home run claims if you will, much like in  
12 our demand letter. We had this \$5 million demand as  
13 part of the overall settlement. We thought that it  
14 would have been useful to have some big number claim  
15 in the case when we take it to jury, to the extent  
16 we're able to.

17           Indeed, that's what gave rise to Jim Hall's  
18 original damage report with these very substantial,  
19 very sizable numbers in the millions of dollars. We  
20 had no particular confidence that we would recover a  
21 figure like that at trial. And I think you see from  
22 the observations you had with respect to Exhibit 20  
23 that the jury was conservative with respect to money  
24 damages. In any event, the objective was to go to  
25 trial with our declaratory judgement claims, but also

1 some big number claim if we could put one together.

2 As of the week before trial, we had a big  
3 damage claim that we had put together, and that is  
4 embodied in Jim Hall's original report, Exhibit 15. A  
5 week before trial, the judge took that away from us.

6 And we suggested to Bert that if he wanted  
7 to proceed on some big dollar damage theory, that  
8 maybe a way to do it would be to carve out a part of  
9 the pending claim and allow him to file that in  
10 another proceeding and try to develop that and move  
11 forward with that.

12 Q When did that discussion that take?

13 A That was after the final pre-trial  
14 conference with the judge.

15 Q And who was present at that discussion?

16 A There may have been multiple discussions.  
17 Certainly, we talked about it in person in a meeting  
18 attended by Bert, myself, I think Lainard Bush may  
19 have been there. I believe we discussed it in one of  
20 these strategy sessions that Mike Bruzzese attended.

21 Again, the idea was, you know, if you want  
22 to go after Matson Lumber Company for some big dollar  
23 claim, this is a way of doing it, recognizing that the  
24 claim that we also thought we could go forward on now  
25 had suddenly been taken away from us.

1           Obviously, we were able to go forward on  
2 and prevail on all of our claims for declaratory  
3 relief and a subset of our claim for damages.

4           Q       The big dollar claim, that was within count  
5 V you said; is that correct?

6           A       No. The big collar claim appears riddled  
7 throughout the complaint, because virtually every one  
8 of those counts would entitle -- to the extent we were  
9 able to proceed on them, every one of those counts  
10 would have entitled Bert to at least make a claim for  
11 damages like those set forth in Exhibit 15.

12          Q       Okay. So those would include counts V, VI  
13 and VII; is that correct -- as well as other claims?

14          A       Yeah. The breach of contract claims, the  
15 trespass claims, conversion, accounting, all of  
16 those. Again, that is all premised on the underlying  
17 argument that the option agreements had been  
18 violated.

19                   (Thereupon, Hare Deposition Exhibit No. 21  
20 was marked for identification.)

21          Q       Let's go back for a second. Exhibit 21,  
22 that is the stipulation for dismissal. It looks like  
23 it's a December 15, '97 date?

24          A       Yeah. I think this was the morning of the  
25 first day of trial. And this is a rule 41

1 stipulation.

2 Q What is rule 41?

3 A Rule 41 is a rule of federal procedure that  
4 allows the parties to dismiss an action or counts  
5 within an action under various terms, depending on  
6 what the circumstances are. For instance, a plaintiff  
7 can dismiss it unilaterally at certain stages of the  
8 case. At other stages, the consent of all parties is  
9 required.

10 In this case, because the litigation had  
11 progressed as far as it did, it was necessary to have  
12 the consent of all parties. And that's why we  
13 provided for and obtained the consent of the  
14 defendants through their counsel, Chet Fossee.

15 Of course, rule 41 provides that a  
16 dismissal is without prejudice to re-filing the claim  
17 unless the parties expressly set forth that the  
18 dismissal is with prejudice.

19 Of course, the stipulation for dismissal  
20 that we prepared is not with prejudice.

21 Q First of all, did you obtain Mr. Carlisle's  
22 permission to dismiss count V?

23 A Absolutely.

24 Q When did you obtain that permission?

25 A Prior to preparing the stipulation for



1 dismissal and presenting it to Chet Fossee and to the  
2 court.

3 Q Where did you obtain permission?

4 A In my small conference room on the 18th  
5 floor of this building.

6 Q Who was present when you obtained  
7 permission?

8 A I was there, Bert Carlisle, Mike Bruzzese  
9 was there, and as I said, I believe Lainard Bush may  
10 have been there, but I'm not certain about that.

11 Q What representations, if any, did you make  
12 to Mr. Carlisle that he could re-file, in a sense,  
13 what is set forth in count V and the second action?

14 A I explained to him what I just explained on  
15 the record, namely, the purpose and affect of rule 41  
16 and the difference between a stipulation with  
17 prejudice -- pardon me. A dismissal with prejudice  
18 and a dismissal without prejudice.

19 In fact, I recall after returning from  
20 the -- after leaving the pre-trial colloquy with the  
21 judge, on the morning -- I guess it was  
22 December 15th, I recall reporting to Bert how  
23 delighted I was that Chet Fossee had in fact agreed to  
24 signed the stipulation for dismissal without even  
25 raising the issue of prejudice.

1           Frankly, I thought he was asleep at the  
2 switch and I thought we had got one over on him in  
3 effect as a strategic matter. And I recall explaining  
4 that to Bert and explaining that I was pleased with  
5 that result.

6           Q       What kind of research, if any, did you  
7 conduct at that time, or prior to that time, for the  
8 purpose of trying to identify whether or not any  
9 re-filing of count V, either in state court or federal  
10 court?

11          A       I'm not sure to what extent they are, if  
12 it's a dismissal without prejudice. I don't know what  
13 research if any we did at the time on that question.

14          Q       Okay. You don't recall?

15          A       I don't recall.

16          Q       Was it your anticipation from discussions  
17 with Mr. Carlisle -- let me rephrase the question and  
18 restate it.

19                 Did you represent in whole or in part --

20          A       Pardon me?

21          Q       Did you represent in whole or in part in  
22 discussions with Mr. Carlisle that he could re-file  
23 these claims that are set forth in count V in state or  
24 federal court?

25          A       Not only did I represent that, I told him

1 that that is something that we could do. That was the  
2 whole idea behind carving out that bit of count V.  
3 And moreover, I prepared the pr(i)rit of  
4 summons that was subsequently filed in Warren County  
5 in the Court of Common Pleas.

6 Q You are getting ahead of yourself.

7 With regards to the quantification of  
8 damages that could be recovered in a re-filed action,  
9 what was your understanding of the quantification of  
10 damages that could be recovered in that action?

11 A In my view, it was about zero because this  
12 was the weakest part of our case. This was the least  
13 compelling part of our case. There was this idea that  
14 Bert could develop a hunt club on the property and  
15 he'd make millions of dollars by operating some hunt  
16 club. Juries don't give you money because you talk  
17 about some hunt club you'd like to develop.

18 Q What about with regards to damages to the  
19 property itself?

20 A That was the theory, that as a result of  
21 Matson's inartful harvesting practices, the earth had  
22 been so badly scarred that he couldn't develop this  
23 hunt club that he otherwise would have developed,  
24 putting aside that for 25 years before Matson Lumber  
25 Company started timbering, there was never any

1 evidence that he had taken any steps to develop this  
2 hunt club. In fact, as I recall, the whole idea was  
3 Steve Madewell's. And these kind of speculative  
4 theories just don't lead to jury damage awards.

5 My view is, what kind of damages he could  
6 have got on theory in a trespass claim, it's probably  
7 about zero.

8 Q Was it your understanding that from the  
9 standpoint of dollar damages that at the conclusion of  
10 the December 1997 trial that -- let me state this  
11 right.

12 What was your perception, if any, as to  
13 what the residual dollar damages that Mr. Carlisle  
14 could recover from Matson in any subsequent action?

15 A Residual, you mean how much, what remained  
16 to be collected on?

17 Q Right. Right.

18 A What I just said, zero. I don't believe  
19 what we dismissed was a compelling case that gave rise  
20 to any kind of significant damages.

21 Q Was there any portion of damages that were  
22 articulated in the Hall reports, because there's three  
23 Hall reports --

24 A Right.

25 Q -- that could have been recovered in any

1 re-filed action that you know of?

2 A Not in light of the court's ruling with  
3 respect to the option issue. Maybe Bert could have  
4 filed a cross appeal with respect to that question.  
5 That happened at the hands of other counsel. We were  
6 no longer representing Bert on appeal to the Third  
7 Circuit. To my knowledge, he never did file a cross  
8 appeal to try to resurrect that damage claim with  
9 respect to the option question and all of the counts  
10 of the complaint that derived from that.

11 (Thereupon, Hare Deposition Exhibit No. 22  
12 was marked for identification.)

13 Q Let me just keep on going. Let me show you  
14 this, Exhibit 22, which is a portion of the  
15 proceedings in federal court. It is just excerpts,  
16 which I picked out of the basics. I just want to ask  
17 you some questions about that.

18 A Sure. Forgive me. You've got a cover  
19 page, and then the first page you have is 104, and at  
20 line 1, can you tell me who is speaking? It might be  
21 the Court. I don't know.

22 Q It might be the Court. That wasn't the  
23 reason why. I see down below, Mr. Hare, at line 19.  
24 That's the only thing I was referring to.

25 A Is this closing arguments?

1 was, I think, a lot of witnesses that spent a lot of  
2 time talking about how they perceived there to be  
3 damage to the property. I'm trying to pull a verdict  
4 from a jury. I'm trying to get them to focus on the  
5 issues that are in front of them. That's what I'm  
6 talking about.

7 Q I understand. Let me just ask you to  
8 review this portion of this and ask you a question.

9 I believe this is you speaking. It says,  
10 "I appreciate your patience as you sat through a long  
11 elaborate talk about how badly the farm was damaged  
12 and not damaged, how badly the trees were marked up or  
13 not, how many times the stream was subject to erosion  
14 or not. Those are clearly important issues. They are  
15 important issues for another case another day."

16 A Correct.

17 Q That, in a sense, is a reference to the  
18 possibility of filing an action for those damages at a  
19 later date?

20 A That's right.

21 Q My understanding of your testimony on that  
22 issue is that you did not think there were any  
23 recoverable damages quantified that were recoverable  
24 under that context; is that right?

25 A I'm sorry. You are asking whether my view

1 '95, meaning that you could have gone back two years  
2 if the conversion statute had provided a viable  
3 remedy; you could have gone back to any conversion  
4 between '93 to March '95?

5 A Essentially, yes. I take some issue with  
6 part of that question.

7 There is a common law cause of action for  
8 conversion and there's a statute. And we asserted a  
9 count for conversion that derives from both the common  
10 law and the statute. But in any case, yes, it's a  
11 two-year statute of limitations. We could only  
12 recover damages on that claim going back for a period  
13 of two years, roughly some time in '93.

14 Q So if your investigation led you to believe  
15 that Matson had converted Mr. Carlisle's timber  
16 between '93 and '95, then Mr. Carlisle would have had  
17 a remedy under the conversion statute in the common  
18 law for that conversion; is that correct?

19 A We did conclude that Matson Lumber Company  
20 converted his timber between '93 and '95, and  
21 thereafter. They continued to convert, under our  
22 theory, after we filed the complaint because they  
23 didn't halt their timbering operations.

24 Q Understood. I'm talking about separate and  
25 apart from the timbering in the no cut zone because we

1 under seal.

2 Q If I understand, when you say "too  
3 difficult," didn't Jim Hall quantify the timber that  
4 was taken by years?

5 A He did, but that's not what this issue is.  
6 This issue is, if you're talking about timber to given  
7 stump within the no cut zone, can you tell me whether  
8 that was cut within the last two years or prior to two  
9 years ago? That's what's impossible to determine.

10 Q You could determine a dollar amount?

11 A Yes, but if you look at Matson's chart, we  
12 harvested 1.2 million board feet in '86, that doesn't  
13 tell you where in the property it came from, whether  
14 it was within or without the no cut zone.

15 Prior to the revisiting of summary  
16 judgement, that was not a question we had to deal  
17 with. Once the court dismissed our option theory, and  
18 we're limited now to the no cut zone trees, then  
19 determining when those trees had been cut was an  
20 impossibility. There are no records that set that  
21 forth. Visual inspection, unless it's very fresh cut  
22 timber, would be unavailing.

23 As I say, it was all unnecessary because we  
24 got the same damages under our contract claim. And  
25 that is the subject of the amended report that we



1 talked about, Exhibit 20 I believe.

2 Q So if I understand it, as far as the timber  
3 taking outside of the no cut zone, and putting aside  
4 the question of your arguments under 15(a) and 15(b)  
5 that the court ruled on sua sponte, prior to trial, it  
6 was your understanding -- was it your understanding  
7 that Carlisle had a right to take that timber outside  
8 the no cut zone in the time period '93, '94 and '95?

9 A I'm sorry. You are asking if it was my  
10 understanding that Bert Carlisle had the right to cut  
11 in the no cut zone?

12 MR. HABER: You said Carlisle.

13 MR. CONNER: If I did say Carlisle,  
14 I apologize.

15 A Let's strike it and start over.

16 Q I'm just trying to get to the bottom of  
17 this.

18 Recognizing that the court has granted a  
19 motion for partial summary judgement on your option  
20 argument 15(a) and 15(b) and taking that off the  
21 table.

22 A Right.

23 Q Was it your understanding that Matson had  
24 had a right to take that timber which it took in the  
25 '93, '94, '95 time period, other than the timber that

1 it had taken in the no cut zone?

2 A Whether they had the right to or not, we  
3 were not permitted to proceed to the jury on that  
4 claim.

5 Q But did you make a determination one way or  
6 the other as to whether or not they had a right to  
7 take that timber?

8 A The court made the determination.

9 Q Okay.

10 A You see. And the court determined that  
11 they did, and that our option claim was unavailing.  
12 To my knowledge, no cross appeal was taken on that  
13 issue.

14 Q And if I understand, just to complete the  
15 subject, you didn't make any argument or claim in that  
16 federal declaratory judgement action that Matson's  
17 rights were really based on a timber deed whose rights  
18 had expired as of the time period of '93, '94, '95; is  
19 that correct?

20 A I don't believe I made any claim to that  
21 effect.

22 Q Okay.

23 A I'm unaware of any claim to that effect.

24 Q Now, just so I understand it, it says,  
25 "Mr. Hare: We are prepared to withdraw that."

1           So do I understand that in effect, you were  
2 withdrawing any conversion claim; is that correct?  
3 And the reason why I that, I didn't see a document  
4 that was similar to the other documents.

5           A       A rule 41 stipulation?

6           Q       Yes.

7           A       What I'm saying, if I recall, this page 76  
8 is taken from the portion of the transcript that  
9 transcribes the colloquy with the judge after both  
10 parties had rested and before closing and the jury  
11 charge. And there was a potentially prickly proof  
12 issue here; and that is, if we're going to ask for an  
13 award under count VII for conversion with regard to  
14 the timber in the no cut zone, how do we know what  
15 portion of that timber was removed within two years.

16                   And I said, "Judge, we can obviate that  
17 issue because I get the same damages on breach of  
18 contract and we are going to go forward seeking those  
19 damages on breach of contract."

20                   And the jury gave us those damages on  
21 breach of contract. There was no need to answer this  
22 impossible question.

23           Q       Okay. okay. All right. Let me then just  
24 go back for a second. In your discussions with  
25 Mr. Carlisle about the withdrawal of count V, was

1 there any written document prepared by you that would  
2 have been shown to Mr. Carlisle to evidence his  
3 consent of the withdrawal of count V, if you know?

4 A You're asking did I ask my client in the  
5 days before trial to sign a consent to dismiss count  
6 V? No, I did not.

7 Q Any type of document?

8 A Yeah. Exhibit 21 is a document that  
9 manifests his consent because I talked to him before  
10 doing this.

11 Q I'm just trying find out if there is any  
12 document that bears his signature or refers to him  
13 that you talked to him, a memorandum or anything like  
14 that?

15 A No. I didn't anticipate that 10 years  
16 later, I'd be getting sued over this. I didn't ask  
17 him to sign a document confirming his consent.

18 Q Let me just move forward for a second.  
19 With regards to the claims under the conversion  
20 statute which is made reference to on page 76, what  
21 discussions, if any, can you recall that you had with  
22 Mr. Carlisle about that?

23 A I'm not sure if I had any discussions with  
24 him on that topic.

25 Q Let's go forward a second.